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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,994	09/18/2006	Marc Peuker	59607US005	3030

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EXAMINER

PAGAN, JENINE MARIE

ART UNIT	PAPER NUMBER
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3728

NOTIFICATION DATE	DELIVERY MODE
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02/04/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/598,994	Applicant(s) PEUKER ET AL.	
	Examiner JENINE M. PAGAN	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-58 and 60-92 is/are pending in the application.
- 4a) Of the above claim(s) 65-72, 74-83 and 85 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 55-58, 60-64, 73, 84 and 86-92 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/12/2010 has been entered.

2. This Office Action acknowledges the applicant's amendment filed on 1/12/2010. Claims 55-58 and 60-92 are pending in the application. Claims 1-54 and 59 are cancelled. Claims 91-92 are new.

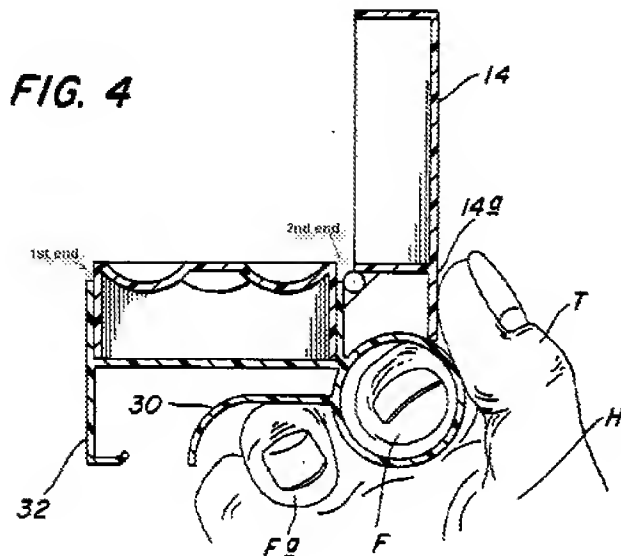
The text of those sections of Title 35, U.S. code not included in this action can be found in a prior Office Action.

Claim Objections

3. Claim 89 is objected to because of the following informalities: In the preamble of claim 89, it states "a method for providing dental substances according to claim 87, comprising after step c)" there is no longer a step c in claim 87. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. Claims 55-58, 61-64 and 90 are rejected under 35 U.S.C. 102(b) as being anticipated by McGarrigle US 5,249,963.



Claim 55: McGarrigle discloses a package assembly for storing and/or delivering substances such as dental substances, comprising at least one container 10 comprising a base 12 and a lid 14; and at least one hinge 16/18 connecting the base 12 and the lid 14; wherein the base 12 and the lid 14 comprise first 14a and second 26/30 levers, and the container 10 can be opened by moving the first and second levers 14a/26/30 towards each other, and wherein the container 10 contains at least one dental substance and is sealed with a breakable seal.

(When the lid is closed down on the base the container is sealed and when the lid is removed from the base the seal is broken.)

Claim 56: McGarrigle discloses the hinge 16/18 is provided between the first 14a and second 26/30 lever.

Claim 57: McGarrigle discloses the container 10 is adapted for air-tight closing of the container with the seal.

(When the lid closes down on the base the container is closed preventing air from entering the container and is sealed as seen in Figure 3.)

Claim 58: McGarrigle discloses an end of the second lever 26/30 is bent in a direction away from the first lever 14a. (Fig. 3)

Claim 61: McGarrigle discloses the base 12 and/or the lid 14 are manufactured with an opening for filling the container 10 after manufacturing and for sealing with a seal.

(When the container is manufactured and filled with substance the lid closes down on the base and the container is sealed together as seen in Figure 3)

Claim 62: McGarrigle discloses the container 10 is sealed with a seal at a first end.

(When the lid closes down on the base the container is sealed together as seen in Figure 3)

Claim 63: McGarrigle discloses the seal is a part of the base.

Claim 64: McGarrigle discloses the seal is a part of the lid.

Claim 90: McGarrigle discloses the substance comprises at least one of the materials selected from the group consisting of bonding materials.

5. It is noted that the claims as presented are directed to a product and method of forming a product. As currently presented, the method is the mere assembly of the product and its examination in conjunction with the product does not represent a serious burden at this time; therefore, no restriction is required. However, if subsequent

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amendments to the claims result in diverging subject matter and searches between the claimed inventions, the examiner reserves the right to restrict at that time.

6. Claims 87 and 89 rejected under 35 U.S.C. 102(b) as being anticipated by McGarrigle US 5,249,963.

Claim 87: McGarrigle discloses a method for providing dental substances, comprising the steps of providing a package assembly, comprising at least one container 10 comprising a base 12 and a lid 14 and at least one hinge 16/18 connecting the base 12 and the lid 14, wherein the base 12 and the lid 14 comprise first 14a and second levers 26/30, and wherein the container 10 can be opened by moving the first and second levers 14a/26/30 towards each other, and wherein the container 10 contains at least one dental substance and is sealed with a breakable seal, and opening the closed package assembly by pressing the two levers 14a/26/30 together.

(When the lid is closed down on the base the container is sealed and when the lid is removed from the base the seal is broken.)

Claim 89: McGarrigle discloses a method of closing the container 10 by pressing the lid 14 onto the container 10.

Claim Rejections - 35 USC § 103

7. Claims 60, 84, 86 and 91-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrigle US 5,249,963 in view of Scharf US 4,991,759.

Claim 60: McGarrigle discloses the claimed invention as stated above in claim 55 but it does not specifically disclose the base, the lid and the hinge are integrally molded.

However Scharf discloses a base 16, a lid 14 and a hinge 20 are integrally molded. (Col 3:16-23)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the base, lid and hinge integrally molded, since it has been held that forming the cover, base and hinge in one piece an article which has formerly been formed in three pieces and put together involves only routine skill in the art. Howard v. Detroit Stove Works, 150 U.S. 164 (1993).

Claim 84: McGarrigle discloses the claimed invention as stated above in claim 55 except the package assembly exhibits an orange color, to filter blue light.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the package to exhibit an orange color to filter blue light since it was known in the pharmaceutical art that it is common to provide the color to protect the substance inside of the container.

Claim 86: McGarrigle discloses the claimed invention as stated above in claim 55 except the lid and/or container comprise a self-cleaning or low energy surface.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to the lid and/or container comprise a self-

cleaning or low energy surface, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416

Claim 91: McGarrigle discloses the claimed invention as stated above in claim 55 but it does not specifically disclose the breakable seal can be broken by pushing the lid in a direction substantially towards the container.

However Scharf discloses a breakable seal can be broken by pushing the lid in a direction substantially towards the container.

When the tip of the cover 14 (at surface 38) reaches the top of the container 16, it creates a seal. That seal is later broken when the lid is pressed down further on to the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the breakable seal be broken by pushing the lid in a direction substantially towards the container as taught by Scharf, since Scharf suggests at Fig 2 and 3 that such a modification would provide an alternate way of breaking the sealed container.

Claim 92: Scharf discloses an appendage 38 is created at the breakable seal during activation and provides a friction fit between the lid 14 and second end of the container 16 when the lid 14 is pushed onto the container 16. (Col 3:66-4:7)

8. Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrigle (US 5,249,963) in view of Discko, Jr. (US 5,660,273).

Claim 73: McGarrigle discloses the claimed invention as stated above in claim 55 except it does not specifically disclose the package comprises a disposable applicator.

However Discko discloses a package 30 comprising a disposable applicator 20.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the package of McGarrigle include a disposable applicator as taught by Discko, since Discko states at column 3 line 50-60 that such a modification would allow the user to use the material such as bonding agents located inside of the container.

9. **Claim 88 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGarrigle US 5,249,963 in view of Scharf US 4,991,759.**

Claim 88: McGarrigle discloses the claimed invention as stated above in claim 87 but it does not specifically disclose pressing the lid in substantially the direction of the container for breaking the seal.

However Scharf discloses pressing the lid 14 in substantially the direction of the container 16 for breaking the seal.

When the tip of the cover 14 (at surface 38) reaches the top of the container 16, it creates a seal. That seal is later broken when the lid is pressed down further on to the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the breakable seal be broken by

pushing the lid in a direction substantially towards the container as taught by Scharf, since Scharf suggests at Fig 2 and 3 that such a modification would provide an alternate way of breaking the sealed container.

Response to Arguments

10. Applicant's arguments filed 1/12/2010 have been fully considered but they are not persuasive. In response to the Applicant's argument with respect to the 102(b) rejection of claims 55-59, 61-62, 87, 89 and 90 and the 103 rejection of 60, 63, 64, 73, 84 and 86 that a container containing at least one dental substance and being sealed with a breakable seal, it is disclosed specifically in Col 1:43-57 and throughout the specification of McGarrigle that the container holds materials used in dental procedures. Also McGarrigle discloses a breakable seal, when the lid 14 is closed down on the base 12 the container is sealed and when the lid 14 is removed from the base 12 the seal is broken. Applicant's arguments with respect to new claims 91-92 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENINE M. PAGAN whose telephone number is (571)270-3216. The examiner can normally be reached on Monday - Thursday, 8am-4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mickey Yu/
Supervisory Patent Examiner, Art Unit 3728

/Jenine M Pagan/
Examiner, Art Unit 3728